

Chapter 4

Managing

INTRODUCTION

4-1. Effective contractor management on the battlefield is essential to ensure that contractor-provided support is properly orchestrated and synchronized with the overall operation support plan, and that contractor employees are properly accounted for, protected, and supported. Additionally, adequate contractor-employee accountability and contractor visibility in the theater is necessary to establish positive control, to perform initial reception and integration, to provide necessary support, and to establish and manage their location and movement on the battlefield. Appendix B provides a notional example of contractor management planning requirements.

4-2. As stated earlier, contractor management does not flow through the standard Army chain of command. Management of contractor activities is accomplished through the responsible requiring unit or activity COR through the supporting contracting organization in coordination with selected ARFOR commands and staffs. It must be clearly understood that commanders do not have direct control over contractor employees (**contractor employees are not government employees**); only contractors directly manage and supervise their employees. Commanders manage contractors through the contracting officer and their appointed CORs in accordance with the terms and conditions of the contract.

ROLES AND RESPONSIBILITIES

4-3. Commanders and their staffs at all levels must manage the total contractor force supporting the ARFOR units within the AO. In planning and execution, direct command interest and involvement is necessary to ensure that contractor support receives the proper attention. Contractor support must be monitored to ensure compliance with the stated requirements so it does not hinder the overall military operation.

GEOGRAPHICAL COMBATANT/SUBORDINATE UNIFIED/JOINT TASK FORCE COMMANDER

4-4. The combatant commander sets the tone for the use of contractor support by ensuring it is considered during planning and is part of the OPLAN or OPORD. The combatant commander establishes priorities, determines guidance on contractor use to include specific theater-specific entrance requirements, and restrictions and policies. The combatant commander also ensures policy is in place for the staff, subordinate joint force commands, normally in the form of a JTF, and Service component commands to account for the total contractor presence in the theater to include individual

accountability as required, and reviews and approves Service component support plans. The JTF commander is responsible for operations within the joint operational areas (JOA) and, when necessary, may establish JOA-specific contractor policies and procedures. Normally, the combatant commander appoints a lead Service or agency responsible for JTF contractor-related planning and to coordinate common user logistics (CUL)-related theater support contracts. In many cases, the Army will be the lead Service responsible for these CUL theater support contracts.

ARMY SERVICE COMPONENT COMMAND/ARMY FORCES

4-5. The ASCC commander commands and controls all assigned and attached Army forces in the supported combatant commander's AOR and is responsible for all Army support, including contractors, unless the combatant commander directs otherwise. In most circumstances, the ASA(ALT) designates the ASCC as the HCA, thus making the ASCC the lead contracting authority for the Army in the AOR. The ASCC, through the PARC, manages and conducts Army in-theater-related acquisition activities necessary to accomplish the mission; acquires theater support contract supplies, equipment, and services; provides overall guidance concerning Army theater support contracting plans/policies.

4-6. The ASCC commander is also responsible for the overall management of all contractors providing support to ARFOR units within the AOR. However, unlike the situation for contracting authority, there is no lead ASCC contractor management staff. Without a lead contractor management staff, it is imperative that each staff be familiar with and properly execute their specific contractor management responsibilities as laid out in this chapter.

4-7. As stated above, the combatant commander may also appoint the Army as the lead Service for contracting within a specific JOA. Normally, this lead Service mission is executed by a subordinate ARFOR contracting agency, called the mission chief of contracting in joint vernacular, which acts as the approving authority for all common-user contracting actions for the joint force as designated by the combatant commander. The ASCC and ARFOR in this case would also be responsible to develop the joint contracting support plan. See JP 4-0 and JTTP 4-07 for more information on contracting in joint operations.

PRINCIPAL ASSISTANT RESPONSIBLE FOR CONTRACTING

4-8. A special staff officer is the ASCC senior Army acquisition advisor responsible for overall **planning and management of theater support contracts in the AOR**. The PARC is often dual-hatted to command the Army's theater contracting activity and to oversee the daily activities of the ASCC theater support contracting operations. With regards to management of contractors in an AOR, the PARC is the focal point in the planning for and managing of those contracts let by the Army contracting staffs within the AOR. The PARC office is not designed nor manned to function as the lead organization for the overall contractor integration mission; this is a collective function shared by numerous ASCC staff members.

PROGRAM EXECUTIVE OFFICER/PROGRAM MANAGER

4-9. ASA(ALT) PEOs or PMs are the designated managers for the development, acquisition, and fielding of major weapon and equipment systems for the military (less simulations and training devices which are still managed by USAMC). The PEOs and PMs are responsible for planning, programming, budgeting, and execution needed to place a particular system in the hands of the ultimate user. During the fielding of a system, some governing life-cycle contracts are written to include contractor-provided support after the system has been sent to the user either as ICS (temporary contractor support) or CLS (long-term contractor support).

4-10. Whether a system is ICS or CLS, PEOs and PMs include deployment provisions into their contracts so that the system contractor involved is aware of and prepared to live and operate in possibly austere and hazardous environments. Important among these requirements are the management and accountability procedures used when the contractor is in the AO. This requirement is often difficult to manage, especially since most PEO and PM management personnel do not deploy with the supported unit. PEOs and PMs must establish deployment preparation and in-theater management agreements with the supported field units.

Managing ASA(ALT) System Contractors

At the time of the approval of this manual, the general, but not formal, agreement was that many of the ASA(ALT) system contractors will be managed at the unit level via the USAMC LSE. Accordingly, the PEOs/PMs, along with the USAMC LSE and the supported unit, must ensure that all deploying system contractors are properly prepared for deployment, as well as accounted for, protected, and supported upon deployment.

ARMY FORCE CONTRACTING ORGANIZATION

4-11. The senior Army contracting staff provides Army contingency contracting support in the AO. This organization performs the contracting functions for the ARFOR and ensures all approved requests for theater contractor support are processed IAW joint and ARFOR command guidance. The senior ARFOR contingency contracting organization may be a separately established organization or come from one of the existing ASCC contracting commands. It also could be established utilizing contracting staff found in the theater support commands (TSC), corps support commands, division support commands, or interim brigade combat teams (IBCT).

4-12. The ARFOR contingency contracting organization implements the JTF and ARFOR contracting guidance found in theater contracting support plans. It also negotiates, awards, administers, and closes theater support contracts. The ARFOR contingency contracting organization maintains visibility over their own theater support contractors and the compliance of these contracts, but does not concern itself with the total contractor presence in the AO.

SUPPORT COMMANDS

4-13. The Army maintains a selected number of operational-level support commands. These support commands include the personnel command (PERSCOM), theater-level military intelligence brigades, TSC (logistics), medical command, engineer command, and the theater signal command.

4-14. These support commands are the primary requiring organizations to maintain the day-to-day management, as well as contractor visibility and contractor-employee accountability within their functional area. In small-scale contingencies where these commands may not deploy, the senior support commands performing these operational-level functions would be responsible for the same contractor-support oversight. This mission, depending on the scope of the requirement, may require augmentation from the higher-level support command.

4-15. Some strategic-level commands such as USAMC, USTRANSCOM, DLA, USACE may contract specific support in an AO. When they do so, they, of course, have a responsibility for managing contractors. This responsibility starts with the inclusion of theater-specific contractor-management and visibility requirements in the applicable contract language. Obtained from operational planning documents, these contracts include the various deployment, reception, integration, and reporting requirements necessary to properly manage and control the flow into and operating in the AO. In some cases, these commands are integrated into the Army operational-level support commands addressed above. In other cases, these commands may report directly to the joint force commander. For example, the USAMC LSE, which often plays a vital role in the area of systems-support contract supervision, is normally attached to the TSC or, when the TSC is not deployed, the senior multifunctional logistics command in the AO.

4-16. These strategic-level organizations retain contracting authority for those specific functions from their parent commands. When appropriate, Army commanders and their staffs include these commands in their mission planning, and each should include support appendices in the applicable staff section annex to the OPLAN or OPORD. For example, the staff engineer coordinates USACE procurement of real estate and real property; the joint force transportation planner coordinates with USTRANSCOM commands to monitor their assets. When procuring goods and services within the theater, they will do so IAW guidance and procedures provided by the joint force commander's mission chief of contracting.

4-17. In addition to the strategic organizations listed above, DCMA provides contract-management services to major contracts to include selected contracts within the AOR. DCMA monitors contractors' performance and management systems to ensure that cost, product performance, and delivery schedules are in compliance with the terms and conditions of the contracts.

4-18. The combatant commander J-1 establishes and publishes basic theater entrance requirements, accountability, and other personnel-related procedures to include contractor employees. The combatant command or subordinate JTF command J-1 also coordinates and publishes a specific theater/JOA contractor identification (ID) card policy. The senior Army personnel planner in theater, via guidance from the combatant commander J-

1 and DA PERSCOM, establishes Army-specific contractor-employee theater-entrance, personnel-related support and accountability policies.

CONTRACTOR

4-19. The contractor implements and complies with all government-directed management requirements contained in the contract. Although the contractor is solely responsible to manage its employees and operations, it also has responsibility for ensuring that the various contractually mandated requirements are met. These may include—

- Providing feeder data for the development of the TPFDD and the theater personnel accountability system.
- Ensuring all employees comply with DOD, Army, or theater-specific policies and directives.
- Dealing with performance or conduct problems reported by the government.

CONTRACTOR VISIBILITY AND CONTRACTOR-EMPLOYEE ACCOUNTABILITY

4-20. The intent of contractor visibility and contractor-employee accountability is to know which contractors are participating in an operation, where they are in the operational flow (deployment, reception, integration, or providing support), when they are needed to provide support, and a clear day-to-day overview of their support mission. The ARFOR commander should maintain visibility over all contractors in the AO, similar to the manner we report military unit readiness. This is necessary to orchestrate their activities and movements with combat forces, and so that their relationship with the current operational situation can be assessed and adjusted when necessary.

4-21. Contractor-employee accountability is similar, but not the same, as for military and DACs. Contractor-employee accountability is limited to US citizens and TCN system and external support contractors who deploy with, and are in direct support of, ARFOR units within the AO. Additionally, the combatant, JTF, and/or ASCC commander may expand this individual accountability requirement to include theater support contractors who require access to military facilities. Establishing contractor visibility and contractor-employee accountability requirements by type of contractor is based on the following rationale:

- Theater support Contractors. Normally, theater support contractors are drawn from the local vendor base with their employees usually residing in local communities. As a result, they do not normally require government-furnished life support when supporting an operation. In fact, many theater support contractor employees will not even have access to military facilities and even those that do will often return to their homes or other non-military-supported billeting arrangements. Therefore, detailed contractor-employee data may not be required and only aggregate data indicating the size of the contractor's workforce is collected. However, when security measures require employees to be issued ID cards for entry into a military-controlled area or facility, at a

minimum, the employee standard name line and identification number may be required, but would not be reported through the personnel accountability system, in order to issue requisite ID cards.

- External support and System Contractors. External support and system contractors normally are drawn from outside the AO and must travel from either CONUS or OCONUS locations; therefore, they require by-name accountability to support the deployment and redeployment process, as well as support operations. Furthermore, because of inherent responsibilities to its citizens, the US Government provides certain support that it is not obligated to do for other nationalities. In this context, the support relates to the injury or death of a US citizen employee and involves certain rights and privileges associated with notification and recovery, return, and burial of remains. In these cases, specific contractor-employee data is required and reported through the established personnel accountability system. Basic employee data is required for TCN contractor employees who deploy with the force for deployment life support and security reasons.

VISIBILITY AND ACCOUNTABILITY POLICY

4-22. Currently, there are no standard joint or Armywide deployed contractor visibility nor contractor-employee accountability procedures outside of this manual. However, contractor visibility and contractor-employee accountability is needed to ensure that the overall contractor presence in a theater is synchronized with the combat forces being supported. Additionally, the Army's responsibility to provide operational and life support and force protection to (and sometimes from) participating contractors dictates the need for maintaining visibility, and selected accountability, of all contract and contractor employees.

4-23. Maintaining contractor visibility and contractor-employee accountability is a continuous process conducted throughout the duration of the operation beginning at its point of origin. Once initial management of the deployed contractors is established and they are integrated with the unit/activity they are providing support or working for, visibility is maintained through status reports flowing through normal military channels. Governing contracts must stipulate the specific visibility reporting requirements, including the type of information required and to whom the information is to be provided. At a minimum, standard contract language should be used to identify the requirement to provide visibility and accountability reports required.

CONTRACTOR EMPLOYEE ACCOUNTABILITY

4-24. The senior Army personnel planner in theater, via guidance from DA PERSCOM and the combatant commander, establishes operational specific contractor-employee accountability policies. Contractor-employee accountability normally includes maintaining sufficient data to properly plan for and execute medical, casualty, mail, and other support and force protection requirements. At a minimum, the Army personnel system accounts for US citizen contractor employees and TCNs who deploy with the force. Normally, by-name accountability of TCN external support contractors who do not deploy through military means and theater support contractor

employees is not required. However, the senior Army personnel organization may be required to ensure that theater support contractor employees are issued theater-specific ID cards, as required by the joint force or ARFOR commander.

ACCOUNTABILITY REPORTING SYSTEM AND REQUIREMENTS

4-25. The senior Army personnel organization in the AO establishes contractor-employee accountability through the requiring unit or activity via TPS. The supporting personnel unit at home station, at the CRC/IDS, or in the AO issues contractor employees civilian ID cards IAW AR 600-8-14. Contractor-employee accountability data is entered and reported via by the requiring organization or activity via TPS IAW operational-specific guidance. Typical contractor-employee accountability requirements include:

- Employee standard name line.
- Point of contact (COR) information.
- Employee sex.
- Employee date of birth.
- Employee religion.
- Employee identification number (social security or other uniquely identifying number).
- Employee passport number (if applicable).
- Employee nationality and home address.
- Blood type.
- Marital status.
- Employee point of departure.
- Deployment date (employment date for theater support contractors).
- Security clearance level.

CONTRACTOR VISIBILITY

4-26. All requiring units are responsible for maintaining visibility for contractors providing support to Army forces in the AOR IAW ASCC OPLAN/OPORD guidance. This visibility data is forwarded through the normal chain of command to the ARFOR staff responsible for oversight of that particular contractor function. The ARFOR staff provides contractor visibility information to the ASCC commander/staff as required.

CONTRACTOR VISIBILITY REPORTING SYSTEM AND REQUIREMENTS

4-27. Currently, there is no approved STAMIS or C² system for reporting contractor visibility nor formal policy that lays out the required data fields. Because of this shortfall, the specific contract visibility reporting system and supporting information fields are determined IAW the combatant commander and ASCC guidance. Based on recent lessons learned, any commonly used office automation software can easily accommodate the requirement. Typical contractor and contractor employee required data should include:

- Contract number.
- Contractor company name.
- Type of support provided (e.g., Apache maintenance, road construction, dining facility operation).
- Name of contractor's in-theater manager.
- Awarding contracting office.
- Contracting officer contact information (include name, organization, location, and phone number).
- COR contact information (include name, unit identification code (UIC), and phone number).
- Supported UIC.
- Contractor workforce composition (by location and nationality)—
 - Total number US citizen employees.
 - Total number TCN employees (specific nationality).
 - Total number local national employees.

REQUIRING ORGANIZATION RESPONSIBILITIES

4-28. Requiring organizations, such as the USAMC LSE, USACE, and the ARFOR support commands, must ensure that they provide contractor visibility reports and contractor-employee accountability reports as prescribed in the OPLAN. These commands also coordinate the contractor visibility and employee reporting requirements with the appropriate contracting activity to ensure that this requirement is clearly addressed in the appropriate SOW.

4-29. The contractor maintains data on its workforce and reports required data as prescribed in the contract. The COR ensures that all reporting requirements are submitted to the requiring unit or activity IAW their SOW.

CONTROLS

4-30. The success and effectiveness of the contractor visibility and contractor-employee accountability system are determined by the controls established. Formalizing the requirement during the planning process and incorporating it into the governing contracts legalize the requirement for contractors to provide the needed data. To ensure compliance, a pass and identification system must be in place. Standard civilian ID cards (DD Form 1173) or the new *smart card* ID card must be issued to all supporting system and external support contractor employees at the point initial accountability is established, either at the force projection deployment site, a CONUS CRC/IDS, or the AO reception center. Theater support contractor employees who require access to military-controlled facilities are normally issued theater/JOA-specific ID cards at the AO reception center.

4-31. If this ID card process is not accomplished, contractor employees will not be allowed to enter work areas or utilize government-furnished life support facilities and services, thus placing the contractor, and possibly the Army, in the position of noncompliance with the terms and conditions of the contract.

ESTABLISHING IN-THEATER MANAGEMENT OF CONTRACTORS

4-32. Positive in-theater management of contractors begins with the proper integration of contractors into the operational flow. This process is accomplished for the same reason as for military forces, but also because it is the key point for gaining positive management control over contractors preparing to support the military forces. Integration of contractors is accomplished after they are received into the AO. It is not necessarily a distinct phase, as it is with military forces, as much as it is a set of actions necessary to properly include the contractor into the operational support structure. This means getting them into position or moving them to a location to perform the work they are hired to perform. It also involves formalizing contact with administering contracting and supported unit representatives and establishing support relationships.

4-33. The goal of integrating contractors is to ensure that visibility and applicable accountability are established, and they are incorporated into the operational support structure without hindering or disrupting the military forces they are to support. The method in which a contractor is integrated into the theater's operational support structure is driven by the point of origin of the contractor, either CONUS-based, third country-based, or locally based. Regardless of the point of origin, all contractors must be integrated into the operational support structure.

NOTE: All contractors must be processed and integrated into the ARFOR support structure.

CONUS-BASED CONTRACTORS

4-34. The deployment process facilitates integration of CONUS-based contractors. Whether they are deploying under the control of the military or through their own arrangements, these contractors are required, by the terms and conditions of the contract, to process through an in-theater personnel reception center either as a part of their supported unit or individually. If deploying individually, once reception processing is completed, the contractor is linked-up with the AO activity that it will be providing support for, if it did not deploy with that activity. This requiring organization or activity is not only the contractor's customer, with responsibility for directing its requirements according to the terms and conditions of the contract, but also its sponsor, responsible for ensuring that visibility and accountability are maintained and that government-provided equipment and services, including life support, are provided. Integration is complete when visibility is verified or established, and the contractor is ready to provide support.

THIRD-COUNTRY-NATIONAL CONTRACTORS

4-35. Third-country-based US or TCN contractor employees should deploy through an OCONUS deployment site if at all possible. In some situations, processing third-country-based contractor employees may take place within the AO. Once processed, these third-country-based contractors are integrated into the operational support structure in the same manner as CONUS-based contractors. They will join their supported unit, where visibility is verified, and then proceed to the location(s) where support will be provided. The key to

integrating third-country-based contractors is to ensure that the governing contract directs them to process through the AO reception center so that positive management control can be established.

LOCAL CONTRACTORS

4-36. Local theater support contractors must be properly integrated into the operational support structure. Because theater support contractors do not deploy to the AO, they do process through the reception center, with the exception of getting ID cards as required to meet force protection needs. Therefore, their integration is an abbreviated process involving them furnishing specified information concerning who they are, what support they provide, where the support will be provided, and the composition and size of their workforce, to the sponsoring activity so that visibility can be established. Once accomplished, theater support contractors are assimilated into the operational support structure and are managed in the same manner as any other type contractor.

LOCATION AND MOVEMENT ON THE BATTLEFIELD

4-37. Army operations may occur in a non-linear operational environment without clearly defined traditional borders or boundaries. In these circumstances, contractors can expect to perform virtually anywhere in the AO, subject to the terms of the contract and the combatant commander's risk assessment.

4-38. Army policy (AR 715-9) states civilian contractors may be employed anywhere in the AO necessary to support operations and weapon systems. Generally, contractors are assigned at echelons above division (EAD); however, if the ARFOR commander, based on combatant and JTF commander guidance and METT-TC and the terms and conditions of the contract, determines that contractor services are required at lower echelons, they may be temporarily deployed into the division area as needed, consistent with the terms of the contract and the tactical situation. In cases where critical system contractors are required forward on a permanent basis, the ARFOR commander requests an exception to policy from HQDA. In reaching his decision, the ARFOR commander considers joint and ASCC guidance, the risk to the mission, and the risk to the contractor employees.

4-39. Contracts for contractor support must be carefully drafted to specify the services needed and the conditions under which they are required so contractors are fully aware of what is involved. When contractors choose to perform under dangerous conditions, the cost of the contract may be increased due to the risk and additional difficulty the contractor is being asked to accept. Contractors may be more likely to perform under dangerous conditions if the Army meets certain security requirements to ensure their protection and safety.

4-40. The portion of a theater adjacent to the APOD/SPOD contains the organizations, lines of communications (LOC), and the theater logistics bases required for immediate support and sustainment of forces in the field. Because this area contains the theater logistics bases, it is where the majority of contractor support operations are found. Within this area,

contractor support operations are located where they are the most responsive. Contractors must be located so their operations do not adversely impact the mission or the safety and security of their own employees.

4-41. When addressing where contractors should be located within the AO, planners must also consider the need for contractors to gain access to LOCs and transportation assets to perform their mission. In doing so, they must rely on either the military resources or allow contractors to move about using their own assets. When visibility of contractor-provided assets (e.g., supplies) is necessary, additional management challenges will arise. When contractors are required to use the in-transit visibility/automated information technology devices to provide distribution management visibility, they must either be furnished as GFE or be of a type that is able to interface with the DOD format. In satisfying this requirement, the military may decide to include contractor transportation needs with those of its own and provide transportation support as a government-furnished service. The benefit is a reduction of cost and roadway congestion. The risk is that the contractors' needs may not receive the priority they require, causing them to fail to meet their support requirements. On the other hand, when contractors provide their own assets, the military must ensure that any movement along LOCs, or elsewhere in the theater, is controlled, protected, and does not interfere with other operational requirements. Additionally, consideration must be given to the practicality of military movement restrictions and convoy requirements and their applicability to contractor movements. Is a contractor required to comply with or excluded from the requirements? A conscious decision must be made regarding this issue because of the impact on contractor responsiveness and military force structure impacts (i.e., having to provide personnel to a contractor to comply with the two-driver rule).

CONTRACT COMPLIANCE

4-42. One of the key elements in the managing of contractors is contract compliance. Contract compliance is simply ensuring that the contractor is doing what the contract requires. The key to effective contract compliance is making sure that planners consider the variety of requirements relating to contractor support, include them in operational plans, and communicate these plans to the contracting structure so that they can be included in applicable contracts.

4-43. Contract compliance is the responsibility of the contracting structure that supports the AO. This structure includes the awarding contracting activity (examples include the theater contracting command, USAMC, DLA, or USACE) and the appointed COR. Depending on the scope of the contract and the awarding contracting activity, contracts may be passed to the DCMA for contract administration and compliance. When this is the case, the awarding contracting activity passes routine contract administration responsibilities to the on-the-ground DCMA activity, with the parameters of the delegated responsibility being specified. Regardless of how contract administration is accomplished, the responsible activity or individual maintains insight into the contractors' processes to ensure that the product or service, cost, and schedules are in compliance with the terms and conditions of the contract and theater-specific requirements are being met. Contract

compliance includes on-site surveillance and program-specific processes that cannot be monitored by off-site contracting agencies.

LEGAL CONSIDERATIONS

4-44. When managing contractors on the battlefield, military managers, including commanders, must be aware of the legal considerations that influence their management approach. There exists a body of laws, statutes, and regulations that govern the manner and extent that contractors support a military operation and guide contractor support on the battlefield. These legal provisions impact on contractor status and security, contractual provisions, and discipline. The legal authorities affecting contract support include the SOW for the specific operations, international agreements affecting the theater of operations, and general international law (e.g., the Law of War). These provisions influence the manner in which contractors are managed and may limit the extent of a commander's discretionary authority over contractor requirements and management.

DISCIPLINE AND THE COMMANDER'S AUTHORITY

4-45. Contractor employees are not subject to military law under the UCMJ when accompanying US forces, except during a declared war. Maintaining discipline of contractor employees is the responsibility of the contractor's management structure, not the military chain of command. The contractor, through company policies, has the most immediate influence in dealing with infractions involving its employees. It is the contractor who must take direct responsibility and action for his employee's conduct.

4-46. When criminal activity is involved, international agreements and the host-nation's laws take precedence. In the absence of any host-nation involvement, the commander may be able to utilize a recently enacted law to deal with felonies. In November 2000, the Military Extraterritorial Jurisdiction Act (Public Law 106-778) of 2000 was passed by Congress and signed into law. This law permits the prosecution in federal court of civilians who, while employed by or accompanying the armed forces overseas, commit certain crimes. Generally, the crimes covered are any federal-level criminal offense punishable by imprisonment for more than one year. The law applies to any DOD contractor or subcontractor (at any tier) or their employees provided they are not a national of or reside in the host nation. The law also applies to individuals accompanying the armed forces, which may include a dependent of a DOD contractor or subcontractor employee. This law authorizes DOD law enforcement personnel to arrest suspected offenders IAW applicable international agreements and specifies procedures for the removal of accused individuals to the US. It also authorizes pretrial detention and the appointment of counsel for accused individuals. It should be emphasized, however, that the law does not extend UCMJ jurisdiction over contractor employees. Actual prosecutions under the Military Extraterritorial Jurisdiction Act are handled by federal civilian authorities.

4-47. In addition to the above, the military commander can indirectly influence the discipline of contractor employees through revocation or suspension of clearances, restriction from installations or facilities, or revocation of exchange privileges. The process of removing contractor

employees from the AO is dependent upon the policies issued by the combatant commander and the extent to which those policies are incorporated in the terms and conditions of the contract.

4-48. When confronted with disciplinary problems involving contractors and contractor employees, commanders should seek the assistance of their legal staff, the contracting officer responsible for the contract, and the contractor's management team. This allows for a thorough review of the situation and a recommendation for a course of action based on the terms and conditions of the contract, applicable international agreements, and host-nation or US law.

STATUS OF CONTRACTOR EMPLOYEES

4-49. Nations and their military forces are required to distinguish between military forces (combatants) and civilians (noncombatants), according to the Geneva convention. Contractors are considered to be civilians authorized to accompany the force in the field and, as such, generally cannot be the object of intentional attack. However, they may lose that protection if used in direct support of military operations. Furthermore, contractors may be at risk of collateral injury when they are in close proximity to a lawful target. Therefore, commanders should consider these factors when determining the nature and extent of contractor use, so as not to put them in a position that jeopardizes their status.

4-50. Contractor status is an important issue for the commander in determining the extent of their use and where within the AO they should be permitted. As the environment becomes more hostile, commanders must address a contractor's ability to perform and determine whether or not to provide armed protection. Contractors similarly become concerned about their ability to perform without risk of physical harm or capture and the extent of their rights if captured.

Hague and Geneva Conventions

4-51. Law of war treaties, such as the Hague and Geneva conventions, attempt to establish and clarify the status of contractors when supporting military operations. These treaties entitle contractors to be treated as prisoners of war.

4-52. The 1949 Geneva convention relative to the treatment of prisoners of war (Article 4) provides that prisoner-of-war status upon capture is extended to, among others, contractor employees.

4-53. During armed conflict with nations that are not signatories to these treaties, the status of contractors may be less clear. Commanders should consult their staff judge advocate for legal advice in these situations.

Hague Convention in 1907 (Article 13)

"Individuals who follow an army without directly belonging to it, such as...contractors, who fall into the enemy's hands and whom the latter thinks fit to detain, are entitled to be treated as prisoners of war, provided they are in possession of a certificate from the military authorities of the army which they were accompanying."

1949 Geneva Convention, treatment of prisoners (Article 4)

“Persons who accompany the armed forces without actually being members thereof, such as ...contractors, who fall into the hands of the enemy, and whom the latter think fit to detain, shall be entitled to be treated as prisoners of war, provided they have received authorization from the armed forces which they accompany, who shall provide them for that purpose with an identity card.”

Status-of-Forces Agreements

4-54. Status-of-forces agreements may cover a wide range of issues impacting on the use of contractor support during military operations. Essentially, these agreements establish the legal obligations to be followed when operating within or in-transit through a particular nation. When applicable, these agreements may establish legal obligations independent of contract provisions. Status-of-forces agreements also define the legal status (e.g., host-nation criminal and civil jurisdiction) and legal obligations (e.g., taxes, customs, etc.) of contractors and contractor employees in a host nation. Commanders planning the use of system or external support contractors (i.e., US or TCNs) must consider including them in status-of-forces agreements. In addition to employees status, items to be considered include customs, taxes, and documentation of technical expert status. Status-of-forces negotiations may also involve countries that must be transited to reach the AO.

CONTRACT PROVISIONS

4-55. The SOW prepared by the requiring unit or activity states what support is needed. This document identifies all of the known requirements for the contractor to perform his mission and is the document, along with the applicable OPLAN/OPORD, upon which a contract is based. The contract provisions direct a contractor's work and establish the legal and binding agreement with the government. Contracting professionals, using federal and departmental acquisition regulations, write the contract based on the requiring unit or activity's SOW. Chapter 2 provides a detailed discussion concerning contract provisions and communicating requirements.